

Progress Report No. 1

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ISSUES AND OPTIONS IN ADDRESSING THE ROLE AND FUNCTIONS OF THE CONTRACT MANAGEMENT UNIT IN FULFILLING THE OBLIGATIONS OF COUNCIL UNDER SECTION 81 OF THE MUNICIPAL SERVICES ACT

This purpose of this discussion paper is to facilitate a dialogue amongst stakeholders with an interest in the provision of municipal services through “Service Delivery Agreements” with external mechanisms.

The discussion paper is structured to identify key issues that impact the role of the City Council in the exercise of its responsibilities and authorities under Section 81 of the Municipal Services Act. The objective is to clarify and define the role that the Contract Management Unit, which is under the City Manager, must play to ensure that the conditions of Section 81 are addressed under the recent municipal services model that has been implemented by the City of Johannesburg. The discussion paper identifies major theme areas, and then issues within themes, which must be addressed in arriving at a consensus.

BACKGROUND

In considering the issues that must be addressed concerning the need and role for a contract monitoring unit or similar oversight unit under the new management strategy, it is important to recognize the recent background that has preceded this situation.

Initial Direction of iGoli 2002

The initial direction of Igoli 2002 was to create a new model for the delivery of municipal services that was stated to be “business focused” rather than “inward focused”. This was particularly true for those services considered to be classified as utilities and agencies (electricity, water & sanitation, waste management, roads & storm water, and parks & cemeteries), which accounted for 59% of operating expenses and 50% of the City’s work force.

This strategy did not consider any form of private sector participation, which was defined to be not politically acceptable at the time of the decision.

Corporatization Through the Use of the Companies Act

The strategy to become more business focused was based on the “corporatisation of the various service entities of the City by forming legal companies under the Companies Act of the Republic of South Africa. Each newly formed company has an “independent” board of directors that is voted (appointed) by the City Council, which is the sole shareholder. These various utilities, agencies and corporatised entities (UAC’s), which were transformed into Companies, were then engaged to provide a service to the public, based on a negotiated Service Delivery Agreement

It was the intent of iGoli 2002 that these companies would be structured and empowered to conduct their “businesses” like normal, commercial companies. In this regard, they would bill for services and collect their own revenues, assume debt for capital projects, and make capital expenditures, with Board approval, to improve and extend services.

This changed model envisioned the creation of a regulatory function, within local government, but independent of politics, that would regulate the performance of these

companies in the delivery of their services, and in the setting of charges and fees for those services.

Recent City Election Produced Changed Thinking/Rethinking

The election for City Council in 2000 produced a City Council composition that had greater needs for increased accountability in the delivery of public services, as well as greater control over those services as they related to the Integrated Development Plan for the City of Johannesburg.

THEME 1: CITY COUNCIL AS SOLE SHAREHOLDER OF COMPANIES AND CLIENT UNDER SERVICE DELIVERY AGREEMENTS.

It was clearly understood, when the various municipal service entities were corporatised, that the City of Johannesburg, acting through its City Council, was the sole shareholder of the corporatised entities (Companies). As the only shareholder, it has the right to name the Board of Directors of the Company. This gets somewhat complicated, when the sole shareholder of the Company is also the principal client of the Company with regard to the delivery of services (Service Delivery Agreement).

Issue: Who should have the role as representative of the shareholder (City Council) and have input to the naming of the various Boards of Directors?

Option A

Have the CMU designated as the shareholders representative and have the CMU facilitate the creation of candidate lists for Board of Director positions, for final election by the City Council, using its knowledge of the needs of the various companies, and their exposure to private sector individuals that could contribute to the decisions that would come before a Board.

Option B

Vest the responsibility of representing the shareholder (City Council) with another unit of Government, in the Office of the City Manager, most likely the Finance Department, and have the Corporate Services Department of the City Manager's Office (Human Resources) administer the process of identification, screening, selection and election of members to Boards of Directors.

Discussion

The distinction that needs to be drawn here is between that of the City as shareholder and that of the City as client. In the public sector, the shareholder rights normally reside with the finance unit. For example, if it were a national asset, it would be the Ministry of Finance or similar ministry. Consequently, it is logical, at the local government level (City), that the corresponding financial unit would represent the shareholders rights.

This logic then allows the concerns and interests of the client to be better represented by a different unit of local government, in this case, the CMU.

Admittedly, both the Finance Unit and the Contract Management Unit are accountable to the City Manager, however the separation, with the proper oversight from the City Manager, is sufficient to prevent any confusion of mission and purpose.

Issue: Who should determine the compensation to members of the various Boards of Directors?

Option A

As companies, the Boards of Directors can determine their own, appropriate compensation, based on the nature and frequency of their need to participate in any decision making activities requiring their input. This could vary significantly from company to company. However, since the compensation to Directors of a company normally requires the approval of the shareholders, and with the City as sole shareholder, then it is the City Council that would determine the compensation.

Option B

The City Council, as sole shareholder, takes a “one-size-fits-all” approach and sets a uniform compensation for all members of Boards of Directors. This would probably be on a meetings-held basis, but it could also be a flat annual rate.

Discussion

It suffices to say that this is not the role of the CMU, in any form, and is best managed, on behalf of the City Council, by the Corporate Services Unit under its Human Resources function.

Issue: Who is the “Client” of the Service Provider, and therefore, who should be the signature to the SDA with the Service Provider?

Option A

The City is the Client of the Service Provider and the signature of the SDA is the Chairman of the City Council on behalf of the City Council.

Option B

The City is the Client of the Service Provider and the signature of the SDA is the Chairperson of the appropriate Portfolio Committee with counter signature by the Executive Mayor, all on behalf of the City Council.

Option C

The City is the Client of the Service Provider and the signature of the SDA is the City Manager, on behalf of the City Council.

Discussion

Given that there is probably little question regarding who is the Client of the Service Provider, the issue to consider is the appropriate level within the municipal structure, where the authority for signature should rest. It is desirable that the signature to the SDA, on behalf of the City Council, be an individual that has a direct vested interest in the performance of the Service Provider, and would be a party to any negotiation or renegotiation of the terms of the SDA.

The Municipal Systems Act authorizes and holds municipalities responsible for the provision of basic services to the local community. The point of responsibility of the City Council, relative to the delivery of services, is the Mayoral Committee and the various Portfolio Committees, which have specific sector responsibilities.

The current mood of the City Council is to vest its interest in the satisfactory delivery of public services, in the Portfolio Committees, under the Executive Mayor. Consequently, placing the signature responsibility for the SDA, at that level, would appear to be the proper place, although the current practice is to have the City Manager sign for the City Council.

If the City Manager is to continue to be the one to sign, then it will require a rethinking of the role of the Portfolio Committee relative to the City Manager. The City Manager would have to engage the Service Providers more directly in terms of negotiations or renegotiations.

THEME: 2 MUNICIPAL DUTIES IN THE ADMINISTRATION OF LAWS, BY-LAWS AND REGULATIONS, AS WELL AS THE PERFORMANCE OF ADMINISTRATIVE SERVICES.

Several sections of the Municipal Systems Act refer to the requirement for municipalities to develop laws, by-laws and regulations to comply with the requirements of the Municipal Systems Act. In addition, there are a number of administrative functions and services that the recently corporatized municipal service entities performed, when under direct City Council administration, that they no longer can, or do, perform. Lastly, it is important to reconsider how the human resources of the City Manager's Office should be utilized under the new management model of corporatized municipal services.

Issue: Who should prepare laws, by-laws and regulations related to the various corporatised entities, and the sectors that they serve?

Option A

The CMU would prepare all laws, by-laws and regulations, which impact the performance of the corporatised entities, for approval by the City Council. All other laws, by-laws and regulations would be prepared by the Legal Section of Corporate Services Unit.

Option B

The Legal Section of Corporate Services Unit would prepare all laws, by-laws and regulations, which impact the performance of the corporatised entities, for approval by the City Council.

Discussion

Sections 74 and 75 of the Municipal Systems Act specifically stipulate that the municipal council (City Council) must adopt and implement a tariff policy, and give effect of such policy in the form of by-laws. Clearly, these sections of the Act demonstrate an intent that tariffs are a "political issue" to be determined, in some form, by an action taken by City Council.

As such, it would appear that the City Council should be advised, in its deliberations and law making, by the Legal Section of the Corporate Services Unit. Once it has passed a by-law to bring effect to policy, then the CMU, in a contractual assistance role, would apply the policy and by-laws to the negotiation of any tariff level with a particular service provider.

Issue: Who should license and regulate the provision of services in the local economy by private service providers?

Option A

The CMU should license and regulate any private entity that provides utility or agency services within the City of Johannesburg.

Option B

The Corporate Services Unit of the City, through its Legal Section, should license and regulate any private entity that provides utility or agency services within the City of Johannesburg.

Discussion

There are private sector service providers that provide services that are similar to, if not the same as, those provided by newly corporatised entities in the City of Johannesburg. These include solid waste collection companies, transport companies (taxis and mini-buses), informal markets, etc. If it is expected that the City owned entities are to perform competitively with these services, then there will need to be some form of performance criteria, licensing and regulation to ensure that there is not a double standard in the City in the provision of services to the public.

Issue: How should the responsibilities of the City Council be performed to satisfy Section 81 of the Municipal Systems Act?

Option A

By the City Manager, to whom the CMU is accountable, and who is currently authorized, by the City Council, to sign all SDA's.

Option B

By the responsible Portfolio Committee, which has sector responsibility, with the technical assistance of the CMU as a support function of the Office of the City Manager.

Discussion

This issue is a defining issue in the role and relationship amongst the various elements of local government. The issue here is whether the management model that is wishing to be implement, for the delivery of public services in the City of Johannesburg, is a politically-driven model or a city management driven model.

As much as some might want to say that it is both, the reality is that it can only be one or the other. From the perspective of the support function of the CMU, it is not very different, although it will feel, as times, like a "worker with two bosses". The greater impact will be on the service provider, since the politically-driven model tends to be more intrusive, on a day-to-day basis in responding to citizen concerns.

Also, in the politically-driven model, the service provider can get very confused when impacted on one side by Regional Directors that are subordinated to the City Manager, as well as by Ward Councilors and Mayoral Committee members.

THEME: 3 DEFINING AND/OR PROCURING/ENGAGING PUBLIC SERVICES

Although the current political climate with the City Council of Johannesburg, for the delivery of public services, is to work within the existing, corporatised entities, it is important to view this theme in the possible broader perspective of commercial outsourcing of services.

Issue: **Who is responsible to define the standard of services to be provided to the public (community) for any given public service.**

Option A

The City Manager, working with staff, based on policy objectives and guidelines provided by the City Council.

Option B

The Mayoral Committee, as directed and delegated to it by the City Council, and acting through its Portfolio Committee.

Discussion

The issue stated here is aimed at identifying the degree to which the management of service provision, from the standpoint of service standards, is to be city management or politically driven.

Issue: **Who is authorized to review and provide input to a Business Plan prepared by a corporatised service provider?**

Option A

The City Manager, working with staff, during the negotiation of the SDA.

Option B

The Mayoral Committee, working through the Portfolio Committee, during the negotiation of the SDA..

Option C

No one except the Board of Directors of the company.

Discussion

The issue here is to understand the purpose of the Business Plan and its submission to whatever unit of government will conduct the negotiation. The parallel in a market-based situation would be the relationship between the technical and financial proposal submitted by a vendor (service provider), and the negotiated service agreement that is finally signed.

The buyer (City) does not review the technical/financial proposal for the purpose of approving or disapproving of its content, but rather as a basis

for the offer being made, and a point of departure in the negotiation process in arriving at a mutually acceptable SDA. It could be possible to argue, in a true, arms length business relationship, that the review and approval of the business plan of a particular corporatized entity would constitute a shared responsibility in the outcome of the quality of the service provided.

Issue: Who is responsible to conduct any procurements related to the delivery of public services?

Option A

The City Manager, working with staff, based on policy objectives and guidelines provided by the City Council.

Option B

The Mayoral Committee, as directed and delegated to it by the City Council, and acting through its Portfolio Committee.

Discussion

The issue stated here is aimed at identifying the degree to which the management of service provision, from the standpoint of procurement of services, is to be city management or politically driven.

THEME: 4 REGULATING AND/OR MONITORING THE SERVICE PROVIDER

Issue: Should there be any basis for regulation outside of the SDA?

Option A

Regulation is only by contract (SDA) and no requirements can be placed on the service provider, outside the terms and conditions of the contract without mutual agreement and contract modification.

Option B

The service provider is, at all times, at the service of the client (City) and therefore, the client may direct the service provider to modify its service delivery as the client sees fit in its understanding of addressing the needs of the public.

Discussion

This issue attempts to focus on, and test, the degree of “arms-length” behavior that is desired or allowable in the particular client/service provider relationship that has been structured in the City of Johannesburg under the new public service delivery model.

Obviously, the more that the pendulum swings toward Option B, the less can be expected regarding the responsibility of the service provider.

Issue: How proactive and intrusive is the monitoring role of the client (City) relative to the service provider?

Option A

Client (City) receives periodic, quantifiable, performance reports from the service provider, as defined in the SDA, for review and approval.

Option B

Client (City) actively engages the service provider in terms of making physical assessments of performance, in addition to the review of submitted documentation, as required by contract (SDA). Client participates in management meetings of the service provider to fully understand the basis for decision-making on the part of the service provider.

Discussion

The options stated here are meant to define a range of behavior on the part of the client (City). What is not intended, as a part of Option B, is for the client to actually direct the service provider to do anything other than to comply with the service standards and performance indicators contained and agreed to in the SDA

THEME 5: CUSTOMER CARE AND MANAGEMENT

Chapter 9 of the Municipal Systems Act addresses the responsibility of municipalities relative to the implementation of a customer care and management program, as it relates to rates and other taxes. In restructuring municipal service delivery around Company Act, the City of Johannesburg has effectively created a service monopoly for each of these companies in their respective sectors.

Issue: **How should the customer care and management requirements of the Municipal Systems Act be addressed and by whom?**

Option A

By the service provider, with oversight of the City Manager.

Option B

By the service provider, with oversight by the Portfolio Committee.

Option C

Shared between the service provider and other functional areas of local government.

Discussion

The various sections of Chapter 9 of the Municipal Systems Act go into a fair amount of detail in addressing what is required of the municipality and/or its service provider in the way of credit control and debt collection.

A fundamental consideration in addressing Chapter 9, under the public services management model that has been developed by the City of Johannesburg, is who should provide oversight, relative to the performance of the service provider on this critical issue.

Also, what are the problems that can result under Option C, which appears to be the current direction of the City Council in having a centralized billing and collection function for all services into City.

Issue: **If customer care and management is left in the hands of the service provider, is there also a need for a formal customer satisfaction function and public hearing process, outside of the service provider activities?**

Option A

Rely exclusively on the performance indicators and reporting that is stipulated in the SDA.

Option B

Structure a separate customer satisfaction measurement system, and conduct independent surveys and public hearing processes, through-out the service area.

Discussion

The issue here is not so much whether independent assessment by the client is needed or not, but rather the degree to which it is performed, and the perception of the users of the service in the conduct of the independent assessments. The user of the services should always feel that there is an alternative to the service provider in terms of airing grievances or concerns. On the other hand, the user of services should always be encouraged to work within the system to resolve inadequate service.

Functional Analysis and Implementation Strategy for Contract Management Unit

City of Johannesburg Metropolitan Municipality

PADCO Inc./USAID

19 April 2002

Background of Technical Assistance

- Original advisory services
- Redefined advisory services
- Development of issues and options
- Draft functional analysis and implementation strategy

Objective of Presentation

- Identify the issues to be addressed that impact the functioning of “The Johannesburg Model”
- Suggest a logic for addressing these issues
- Propose a way forward for the City and the CMU under the Johannesburg Model

Fundamental Issues Under Johannesburg Model

- UAC's as companies and the “end game”
- City Council as shareholder
- Municipal government as client
- CMU as instrument of government
- Tariff policy, methodologies, negotiation

UAC's as a Structural Transformation

- Corporatisation of service entities
- Increased service delivery efficiency
- Improved service delivery cost-effectiveness
- Autonomy and accountability
- Increased management capacity and focus

Economic Characteristics of UACs

- Essential services for which users pay
 - Water, Power, Gas, Pikitup domestic, Metrobus public transit
- Public services/no or nominal user fees
 - Pikitup street cleaning, disposal, Roads, Parks, Zoo, Trading Co.
- Administrative support
 - Propcom, Fleet, IT

Economic Characteristics of UACs

- Private goods subject to competition
 - Fresh Produce Market, Civic Theatre, Pikitup commercial, Metrobus commercial
- Special purpose
 - JDA

Different Contract Management Approaches

- Essential services for which users pay (especially monopolies) require contract management and tariff setting process
- Public services without user fees and administrative support services require contract management (as a client)
- Competitive private goods require least oversight (primarily shareholder oversight)

Defining the End Game – Shareholder Issue

- Is today's status of UACs the final state?
- What is shareholder's strategy for each UAC?
 - Profitable, growing public sector enterprise
 - Breakeven enterprise
 - Subsidised loss-making enterprise
 - Position for future commercial direction
- How is this being addressed today?

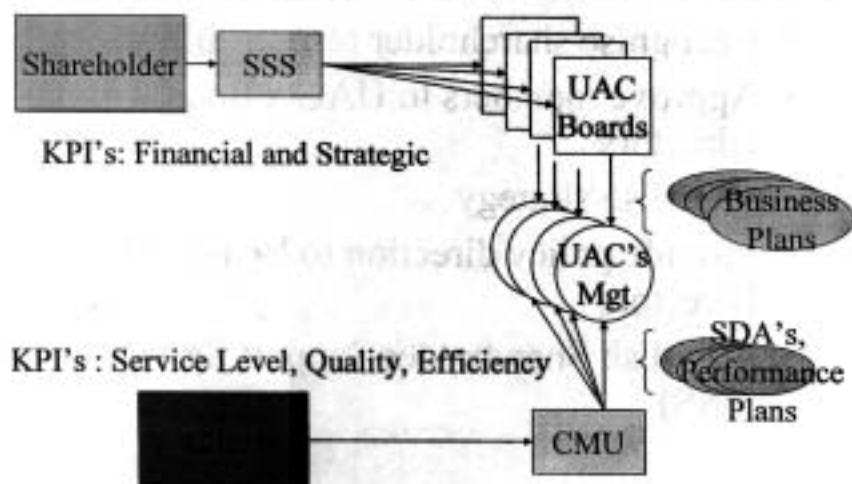
City Council as Shareholder

- Recognise shareholder responsibility
- Approve members to UAC's Boards of Directors
- Establish strategy
- Provide policy direction to Boards of Directors
- Establish Shareholder Support Services (SSS)

Municipal Government as Service Authority/Client

- Define level/quality of services
- Negotiate Key Performance Indicators
- Negotiate tariff or budget subsidy
- Monitor performance

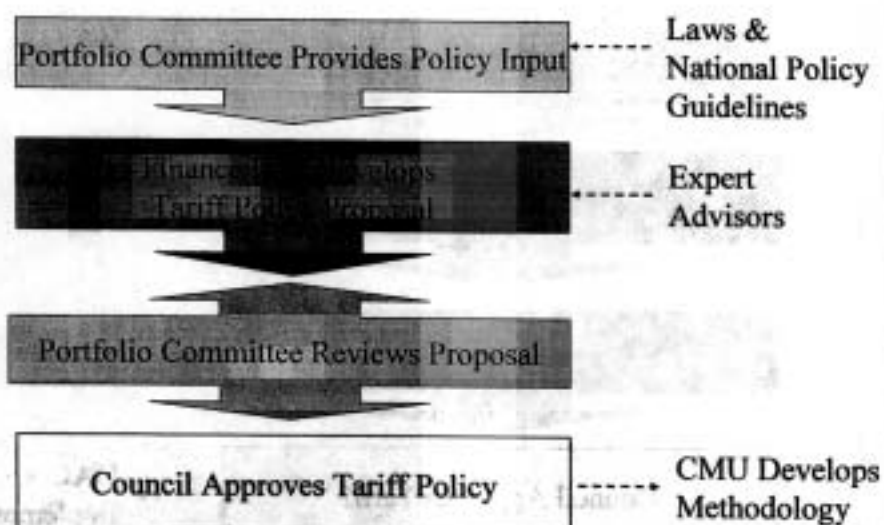
UAC Performance – Shareholder and Client Views



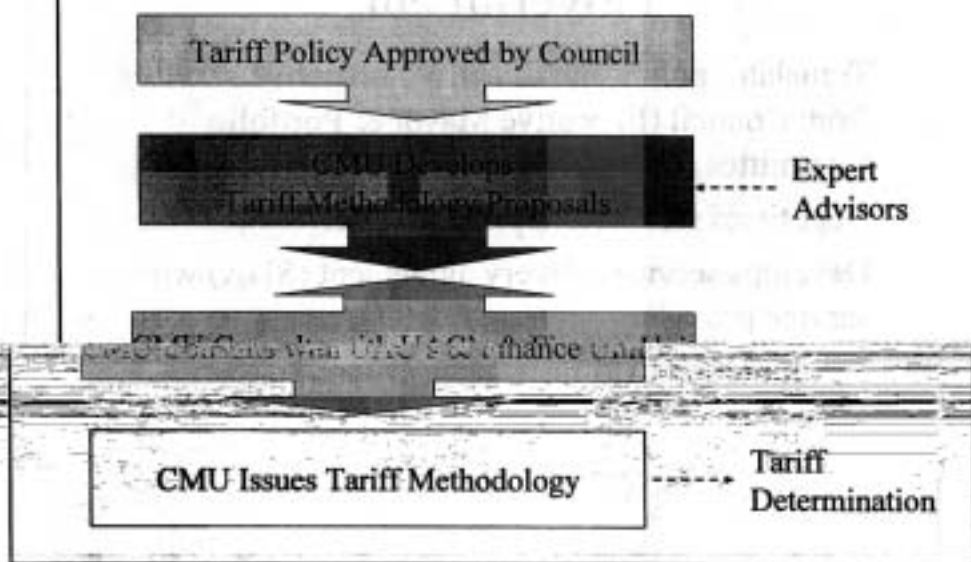
CMU as Instrument of Municipal Government

- Translates policy and directives on public services from Council (Executive Mayor & Portfolio Committee) to service provider
- Negotiates service and price with service provider
- Develops service delivery agreement (SDA) with service provider
- Monitors performance and enforces compliance based on SDA's

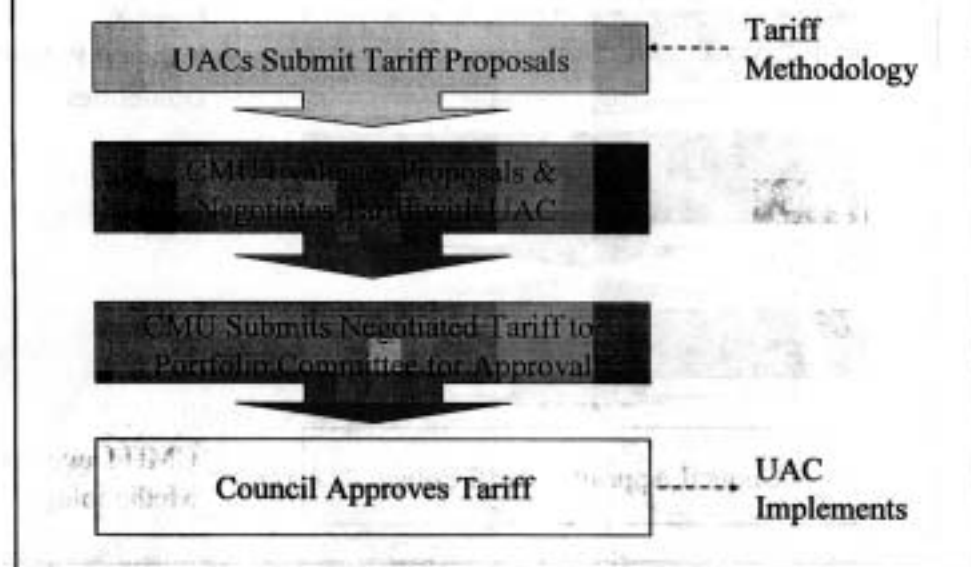
Tariff Policy Formulation



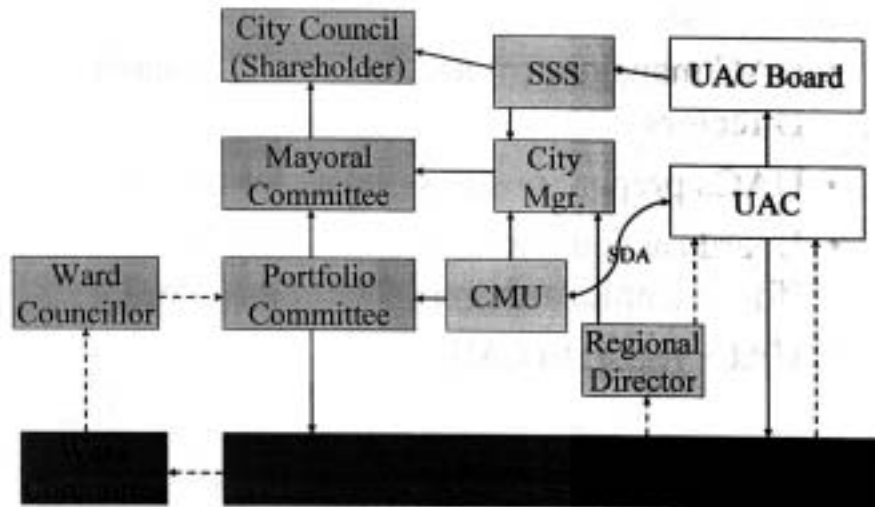
Tariff Methodology Development



Tariff Determination



The Johannesburg Model



The Johannesburg Model Within Evolving Municipal Government Legislation

- Local Government Transition Act
- Municipal Structures Act
- Municipal Systems Act
- Municipal Finance Management Bill

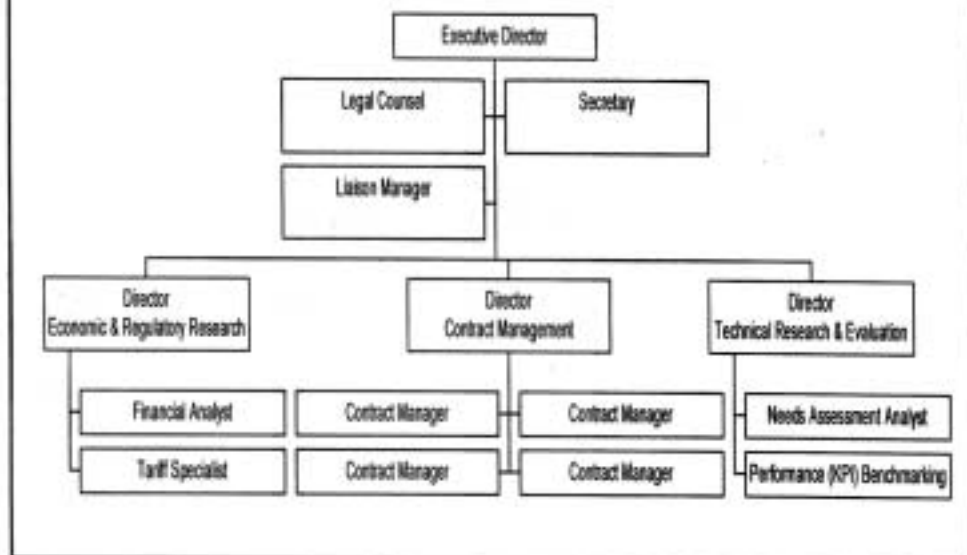
Clarifying the Relationships

- UAC management accountable to Boards of Directors
- UACs prepare business plans for Boards
- Boards accountable to City Council (for example, a shareholder committee)
- UACs report to CMU

Clarifying Role of CMU

- Contract manager in a negotiated procurement
- Intermediary in the regulatory process
- Focused on contract compliance and performance monitoring, rather than business monitoring
- Needs clear criteria to avoid procurement creep

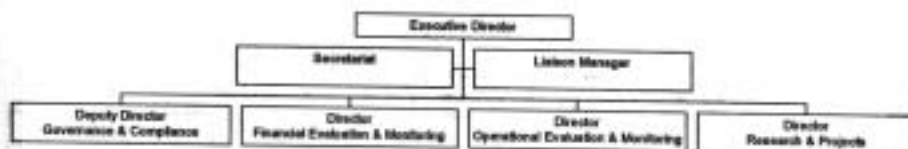
Suggested Organizational Structure of CMU



Actions & The Way Forward

- Clarify CMU's Role as Client Representative
- Shareholder Support Services in appropriate location
- Develop CMU's Capacity
 - Organisational structure & function
 - Staffing & compensation
 - Training & development
- Adopt Procedures & Methodologies
- Present Revised CMU Business Plan to Council

2002 Organizational Structure of CMU



Suggested Organizational Structure of CMU as Client



Suggested Organizational Structure of CMU as Client & Shareholder



Figure 1

Johannesburg Today

Legend:

- Accountable or Reporting To (solid line with arrow)
- Communications & Feedback (dashed line with arrow)

Organizational Structure:

- City Council** (top level)
- Executive Mayor & Mayoral Committee** (reports to City Council)
- City Manager** (reports to Executive Mayor & Mayoral Committee)
- Ward Councillor** (reports to Executive Mayor & Mayoral Committee)
- Portfolio Committees** (reports to Executive Mayor & Mayoral Committee)
- Regional Directors** (reports to City Manager)
- Contract Mgt. Unit** (reports to City Manager)
- UAC's** (reports to Contract Mgt. Unit)
- UAC Boards** (reports to Contract Mgt. Unit)

Feedback/Communication Links (dashed arrows):

- Ward Councillor to Executive Mayor & Mayoral Committee
- Portfolio Committees to Executive Mayor & Mayoral Committee
- Regional Directors to City Manager
- UAC's to Contract Mgt. Unit
- UAC Boards to Contract Mgt. Unit

Figure 2

Key Issue: UAC's Perceive CMU in Two Conflicting Roles

The diagram illustrates the conflict of interest in UAC's perception of CMU roles. It shows two main paths of influence on UAC's Management:

- Shareholder Path:** A Shareholder (represented by a grey box) influences the CMU on behalf of the Shareholder (grey box). This CMU focuses on KPI's: Financial and Strategic. This path leads to UAC Boards (represented by a stack of boxes).
- Client Path:** A Client (represented by a black box) influences the CMU on behalf of the Client (grey box). This CMU focuses on KPI's: Service Level, Quality, Efficiency. This path leads to UAC's Mgt (represented by a stack of circles).

Both UAC Boards and UAC's Mgt are shown to influence Corporate Business Plans (represented by a stack of ovals) and UAC's Financial Plans (represented by a black oval). A central starburst graphic states "CMU Staff Wear 2 Hats", emphasizing the conflict of interest where the same staff are perceived to serve two conflicting roles.

Figure 3

Administrative Status Quo

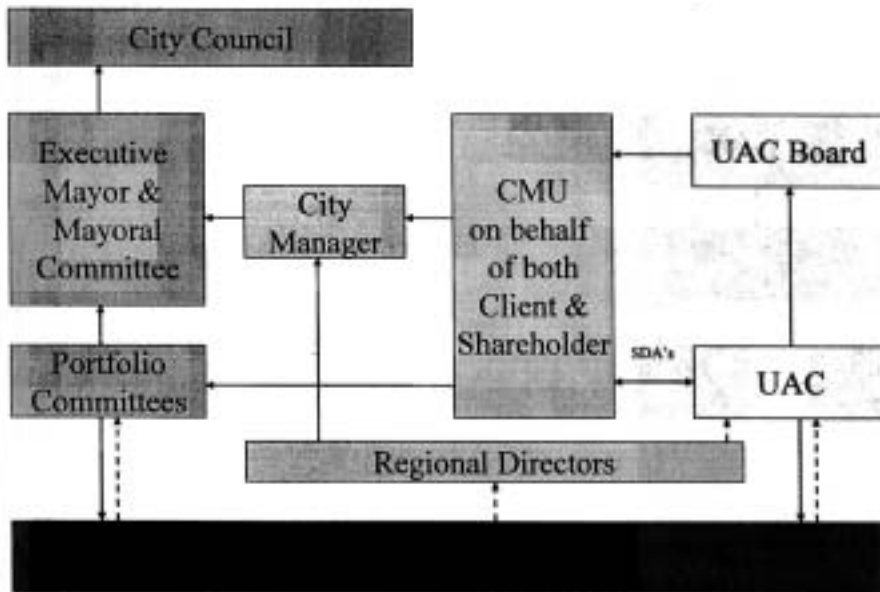


Figure 4

Administrative Option A

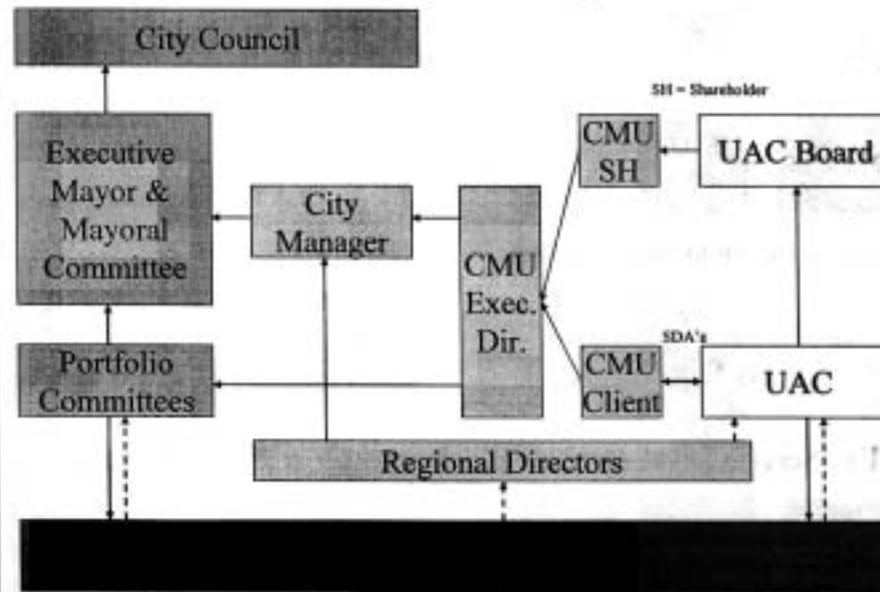


Figure 5

Administrative Option B

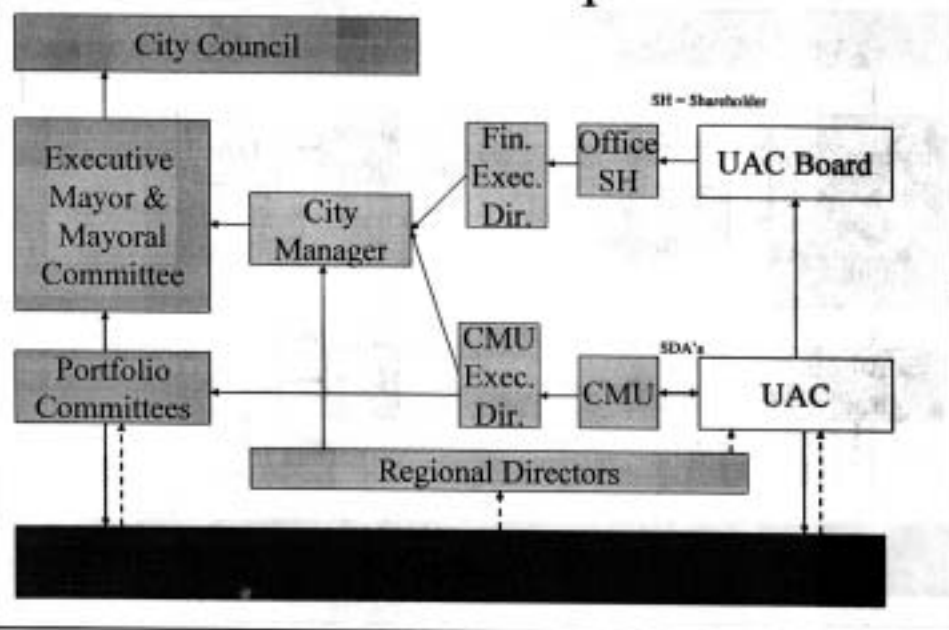
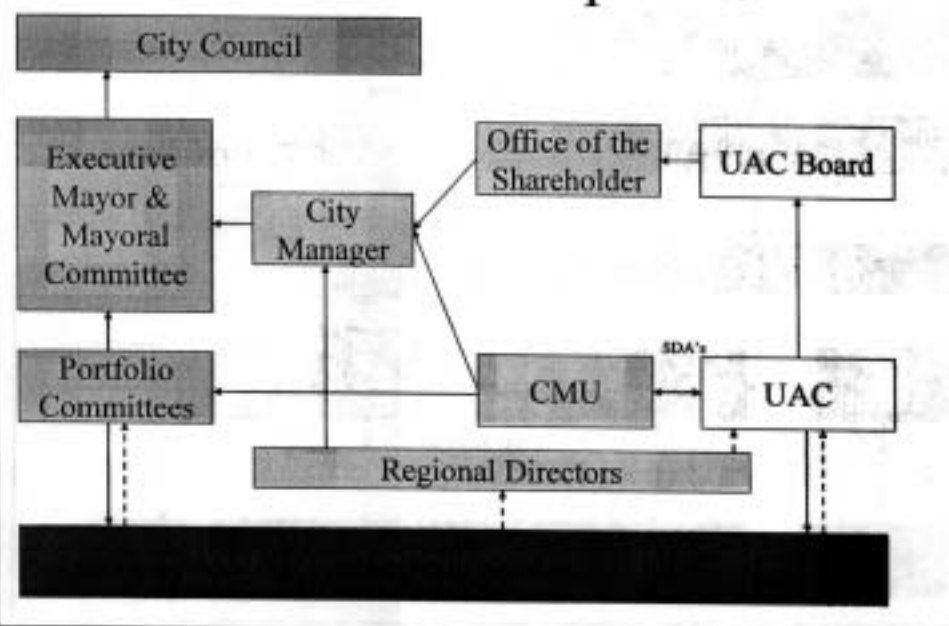
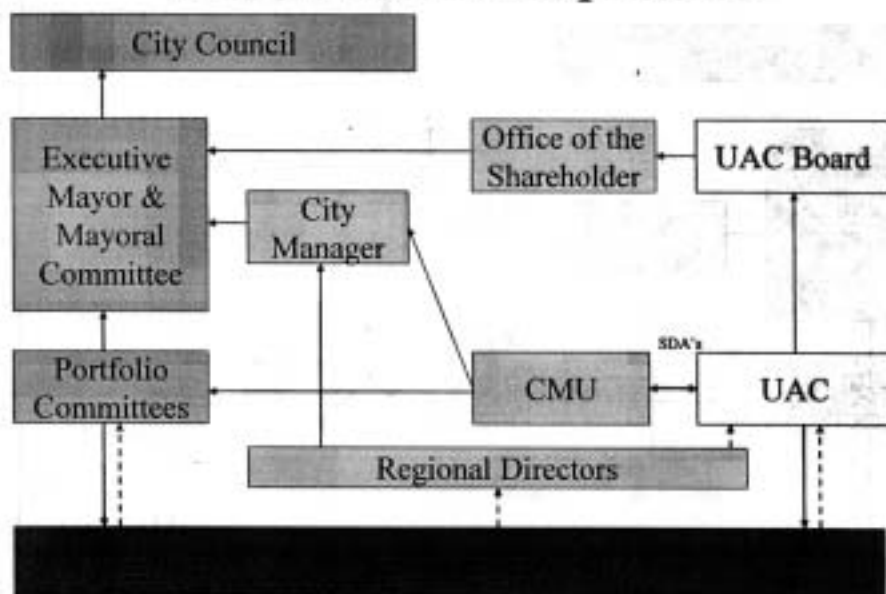


Figure 6

Administrative Option C



Administrative Option D



Political Status Quo

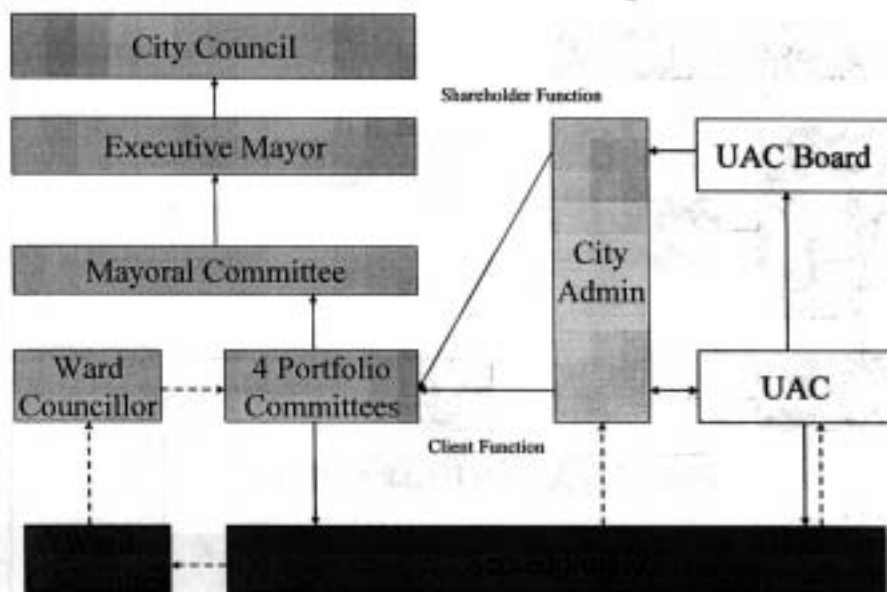


Figure 9

Political Option A

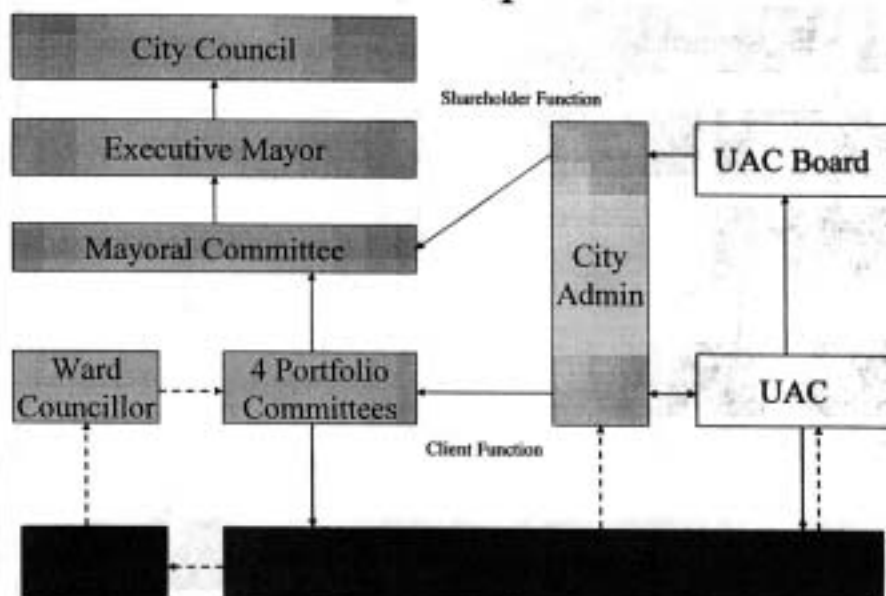


Figure 10

Political Option B

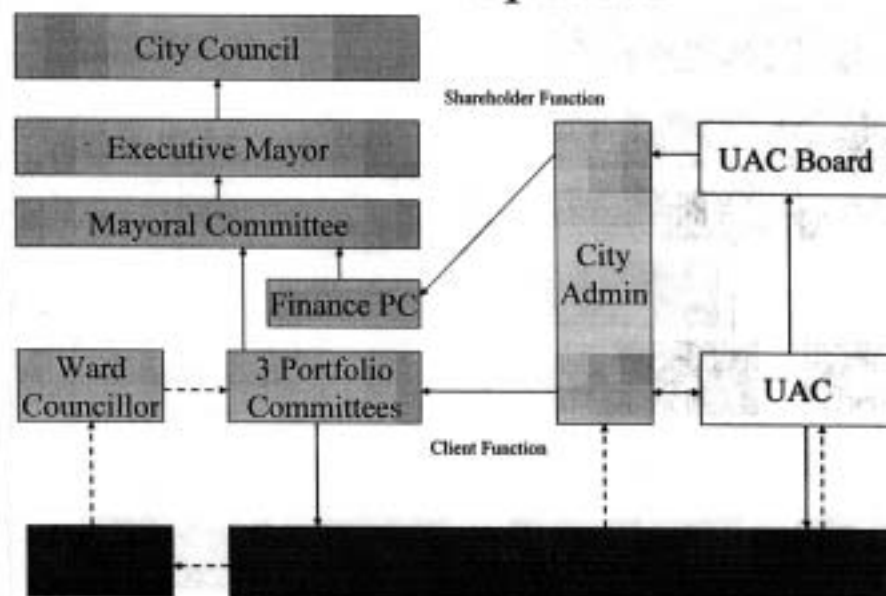


Figure 11

Political Option C

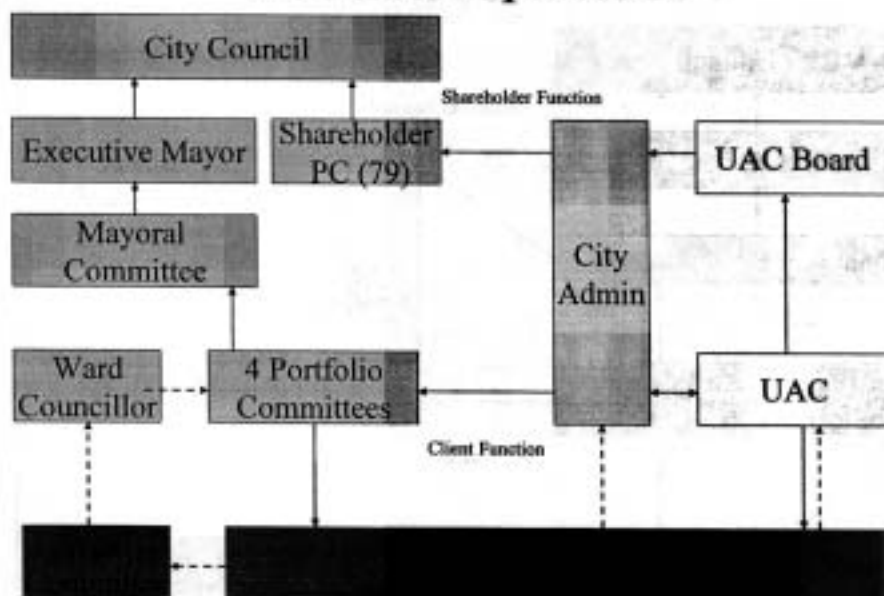


Figure 12

Political Option D

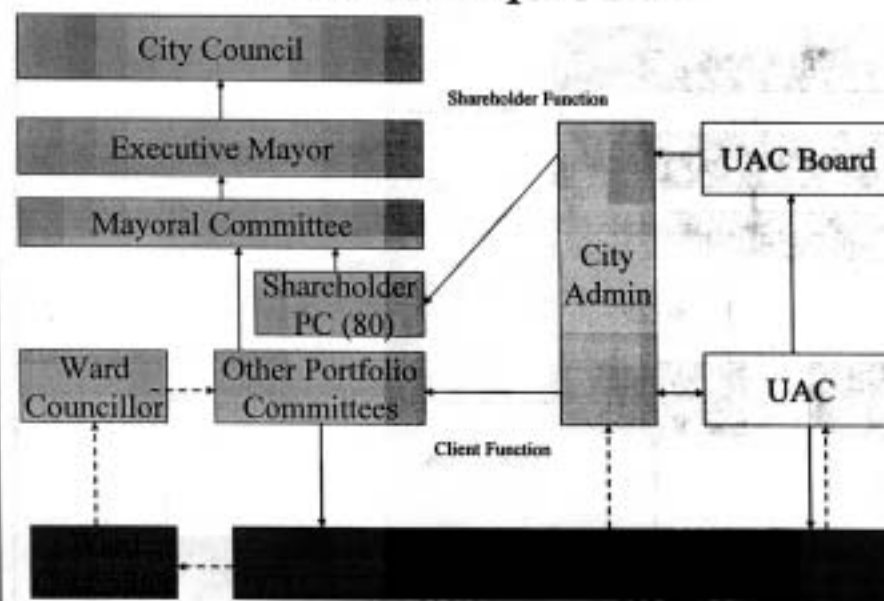


Figure 13

Political Option E

